

(Published in the Wichita Eagle on April 13, 2012)

ORDINANCE NO. 49-258

AN ORDINANCE AMENDING CHAPTER 27.06 OF THE CODE OF THE CITY OF WICHITA, KANSAS, ALL PERTAINING TO FLOODPLAIN MANAGEMENT.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 1. Section 27.06.010 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

Sec. 27.06.010. Statement of purpose.

It is the purpose of this chapter to promote the public health, safety, and general welfare; to minimize loss of life and property ; to establish or maintain the community's eligibility for participation in the National Flood Insurance Program (NFIP) as defined in 44 Code of Federal Regulations (CFR) 59.22(a)(3); to meet the requirements of 44 CFR 60.3(d); and K.S.A. 12-741 et seq, and 12-766 by applying the provisions of this chapter to:

1. Restrict or prohibit uses that are dangerous to health, safety, or property in times of flooding or cause undue increases in flood heights or velocities;
2. Require uses vulnerable to floods, including public facilities that serve such uses, be provided with flood protection at the time of initial construction; and
3. Protect individuals from buying lands that are unsuitable for the intended development purposes due to the flood hazard.

SECTION 2. Section 27.06.020 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

Sec. 27.06.020. Definitions.

Unless specifically defined below, words or phrases used in this chapter shall be interpreted so as to give them the same meaning they have in common usage and to give this chapter its most reasonable application.

"100-year Flood." See "base flood."

"Accessory structure" means the same as "appurtenant structure."

"Actuarial rates." See "risk premium rates."

"Administrator" means the Federal Insurance Administrator.

"Agency" means the Federal Emergency Management Agency (FEMA).

"Appeal" means a request for review of the Floodplain Administrator's interpretation of any provision of this chapter or a request for a variance.

"Appurtenant structure" means a structure that is on the same parcel of property as the principal structure to be insured and the use of which is incidental to the use of the principal structure.

"Area of shallow flooding" means a designated AO or AH zone on a community's Flood Insurance Rate Map (FIRM) with a one percent or greater annual chance of flooding to an average depth of one (1) to three (3) feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

"Area of special flood hazard" is the land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year.

"Base flood" means the flood having a one percent chance of being equaled or exceeded in any given year.

"Basement" means any area of the structure having its floor subgrade (below ground level) on all sides.

"Building." See structure."

"Chief Engineer" means the Chief Engineer of the Division of Water Resources, Kansas Department of Agriculture.

"Chief Executive Officer" or "Chief Elected Official" means the official of the community who is charged with the authority to implement and administer laws, ordinances, and regulations for that community.

"Community" means any State or area or political subdivision thereof, which has authority to adopt and enforce floodplain management regulations for the areas within its jurisdiction.

"Development" means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, levees, levee systems, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials.

"Elevated building" means for insurance purposes, a non-basement building which has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

"Eligible community" or "participating community" means a community for which the Administrator has authorized the sale of flood insurance under the National Flood Insurance Program (NFIP).

"Existing Construction" means for the purposes of determining rates, structures for which the "start of construction" commenced before the effective date of the FIRM or before January 1, 1975, for FIRMs effective before that date. "Existing construction" may also be referred to as "existing structures."

"Existing manufactured home park or subdivision" means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community.

"Expansion to an existing manufactured home park or subdivision" means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

"Flood" or "flooding" means a general and temporary condition of partial or complete inundation of normally dry land areas from: (1) the overflow of inland waters; (2) the unusual and rapid accumulation or runoff of surface waters from any source; and (3) the collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood, or by some similarly unusual and unforeseeable event which results in flooding as defined above in item (1).

"Flood elevation determination" means a determination by the Administrator of the water surface elevations of the base flood, that is, the flood level that has a one percent or greater chance of occurrence in any given year.

"Flood Elevation Study" means an examination, evaluation and determination of flood hazards.

"Flood fringe" means the area outside the floodway encroachment lines, but still subject to inundation by the regulatory flood.

"Flood Insurance Rate Map (FIRM)" means an official map of a community, on which the Administrator has delineated both the special flood hazard areas and the risk premium zones applicable to the community.

"Flood Insurance Study (FIS)" means an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations.

"Floodplain" or "flood-prone area" means any land area susceptible to being inundated by water from any source (see "flooding").

"Floodplain management" means the operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works, and floodplain management regulations.

"Floodplain management regulations" means zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as floodplain and grading ordinances) and other applications of police power. The term describes such state or local regulations, in any combination thereof, that provide standards for the purpose of flood damage prevention and reduction.

"Floodproofing" means any combination of structural and nonstructural additions, changes, or adjustments to structures that reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, or structures and their contents.

"Floodway" or "regulatory floodway" means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

"Floodway encroachment lines" means the lines marking the limits of floodways on Federal, State and local floodplain maps.

"Freeboard" means a factor of safety usually expressed in feet above a flood level for purposes of floodplain management. "Freeboard" tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as bridge openings and the hydrological effect of urbanization of the watershed.

"Functionally dependent use" means a use that cannot perform its intended purpose unless it is located or carried out in close proximity to water. This term includes only docking facilities and facilities that are necessary for the loading and unloading of cargo or passengers, but does not include long-term storage or related manufacturing facilities.

"Highest adjacent grade" means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

"Historic structure" means any structure that is (a) listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register; (b) certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district; (c) individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or (d) individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either (1) by an approved state program as determined by the Secretary of the Interior or (2) directly by the Secretary of the Interior in states without approved programs.

"Lowest floor" means the lowest floor of the lowest enclosed area, including basement. An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access, or storage, in an area other than a basement area, is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable floodproofing design requirements of this ordinance.

"Manufactured home" means a structure, transportable in one or more sections, that is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include a "recreational vehicle."

"Manufactured home park or subdivision" means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

"Map" means the Flood Hazard Boundary Map (FHBM), Flood Insurance Rate Map (FIRM), or the Flood Boundary and Floodway Map (FBFM) for a community issued by the Federal Emergency Management Agency (FEMA).

"Market value" or "fair market value" means an estimate of what is fair, economic, just and equitable value under normal local market conditions.

"Mean sea level" means, for purposes of the National Flood Insurance Program (NFIP), the National American Vertical Datum (NAVD) of 1988 or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map (FIRM) are referenced.

"New construction" means, for the purposes of determining insurance rates, structures for which the "start of construction" commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, "new construction" means structures for which the "start of construction" commenced on or after the effective date of the floodplain management regulations adopted by a community and includes any subsequent improvements to such structures.

"New manufactured home park or subdivision" means a manufactured home park or subdivision for which the construction of facilities for servicing the lot on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by the community.

"(NFIP)" means the National Flood Insurance Program (NFIP).

"Participating community" also known as an "eligible community," means a community in which the Administrator has authorized the sale of flood insurance.

"Permit" means a signed document from a designated community official authorizing development in a floodplain, including all necessary supporting documentation such as: (1) the site plan; (2) an elevation certificate; and (3) any other necessary or applicable approvals or authorizations from local, state or federal authorities.

"Person" includes any individual or group of individuals, corporation, partnership, association, or any other entity, including Federal, State, and local governments and agencies.

"Principally above ground" means that at least 51 percent of the actual cash value of the structure, less land value, is above ground.

"Reasonably safe from flooding" means base flood waters will not inundate the land or damage structures to be removed from the SFHA and that any subsurface waters related to the base flood will not damage existing or proposed buildings.

"Recreational vehicle" means a vehicle which is (a) built on a single chassis; (b) 400 square feet or less when measured at the largest horizontal projections; (c) designed to be self-propelled or permanently able to be towed by a light-duty truck; and (d) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

"Remedy a violation" means to bring the structure or other development into compliance with Federal, State, or local floodplain management regulations; or, if this is not possible, to reduce the impacts of its noncompliance.

"Risk premium rates" means those rates established by the Administrator pursuant to individual community studies and investigations, which are undertaken to provide flood insurance in accordance with Section 1307 of the National Flood Disaster Protection Act of 1973 and the accepted actuarial principles. "Risk premium rates" include provisions for operating costs and allowances.

"Special flood hazard area." See "area of special flood hazard."

"Special hazard area" means an area having special flood hazards and shown on an FHBM, FIRM or FBFM as zones (unnumbered or numbered) A, AO, AE, or AH.

"Start of construction" includes substantial improvements, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvements were within 180 days of the permit date. The "actual start" means either the first placement of permanent construction of a structure on a site, such as the pouring of slabs or footings, the installation of piles, the construction of columns, any work beyond the stage of excavation, or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling, the installation of streets and/or walkways, excavation for a basement, footings, piers, foundations, the erection of temporary forms, nor installation on the property of accessory structures, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvements, the "actual start of construction" means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

"State coordinating agency" means the Division of Water Resources, Kansas Department of Agriculture, or other office designated by the governor of the state or by state statute at the request of the Administrator to assist in the implementation of the National Flood Insurance Program (NFIP) in that state.

"Structure" means, for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home. "Structure" for insurance purposes, means a walled and roofed building, other than a gas or liquid storage tank that is principally above ground and affixed to a permanent site, as well as a manufactured home on a permanent foundation. For the latter purpose, the term includes a building while in the course of construction,

alteration or repair, but does not include building materials or supplies intended for use in such construction, alteration or repair, unless such materials or supplies are within an enclosed building on the premises.

"Substantial damage" means damage of any origin sustained by a structure whereby the cost of restoring the structure to pre-damaged condition would equal or exceed fifty (50) percent of the market value of the structure before the damage occurred.

"Substantial improvement" means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before "start of construction" of the improvement. This term includes structures, which have incurred "substantial-damage," regardless of the actual repair work performed. The term does not, however, include either (1) any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications that have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions, or (2) any alteration of a "historic structure," provided that the alteration will not preclude the structure's continued designation as a "historic structure."

"Variance" means a grant of relief by the community from the terms of a floodplain management regulation. Flood insurance requirements remain in place for any varied use or structure and cannot be varied by the community.

"Violation" means the failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required by this chapter is presumed to be in violation until such time as that documentation is provided.

"Water surface elevation" means the height, in relation to the North American Vertical Datum (NAVD) of 1988 (or other datum where specified) of floods of various magnitudes and frequencies in the floodplain.

SECTION 3. Section 27.06.030 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

Sec. 27.06.030. Applicability.

This chapter shall apply to all lands within the City of Wichita identified as numbered and unnumbered A Zones, AE, AO, AH, AR, and A99 Zones, on the Index Map dated May 2, 2012 of the Flood Insurance Rate Map (FIRM) and the Flood Insurance Study (FIS) as amended, and any future revisions thereto. In all areas covered by this ordinance, no development shall be permitted except through the issuance of a floodplain development permit, granted by the City Council or its duly designated representative under such safeguards and restrictions as the City Council or the designated representative may reasonably impose for the promotion and maintenance of the general welfare, health of the inhabitants of the community.

SECTION 4. Section 27.06.150 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

Sec. 27.06.150. Specific standards.

In all areas identified as numbered and unnumbered A zones, AE, and AH zones, where base flood elevation data have been provided, as set forth in section 27.06.120(b), the following provisions are required:

- (a) New construction or substantial improvements of any residential structures, including manufactured homes, shall have the lowest floor, including basement, elevated a minimum of two (2) feet above base flood elevation. The elevation of the lowest floor shall be certified by a licensed land surveyor or professional engineer.
- (b) New construction or substantial improvements of any commercial, industrial, or other non-residential structures, including manufactured homes, shall have the lowest floor, including basement, elevated a minimum of two (2) feet above the base flood elevation or, together with attendant utility and sanitary facilities, be floodproofed so that below two feet above the base flood elevation the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied. The elevation of the lowest floor shall be certified by a licensed land surveyor or professional engineer. Such certification shall be provided to the floodplain administrator as set forth in section 27.06.080(b)(7),(8), and (9).
- (c) For all new construction and substantial improvement of fully enclosed areas below lowest floor which are used solely for parking of vehicles, building access, or storage in an area other than a basement and that are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of flood waters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria:
 - (1) (1) A minimum of two (2) openings having a total net area of not less than one (1) square inch for every square foot of enclosed area subject to flooding shall be provided; and
 - (2) The bottom of all opening shall be no higher than one (1) foot above grade. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of flood waters.

SECTION 5. Section 27.06.160 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

Sec. 27.06.160. Manufactured homes.

- (a) All manufactured homes to be placed within all unnumbered and numbered A zones, AE, and AH zones, on the community's FIRM shall be required to be installed using methods and practices that minimize flood damage. For the purposes of this requirement, manufactured homes must be elevated and anchored to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors
- (b) All manufactured homes that are placed or substantially improved within unnumbered or numbered A zones, AE, and AH zones, on the community's FIRM on sites (1) outside of a manufactured home park or subdivision; (2) in a new manufactured home park or subdivision; (3)

in an expansion to and existing manufactured home park or subdivision; or (4) in an existing manufactured home park or subdivision in which a manufactured home has incurred substantial damage as the result of a flood, shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated a minimum of two (2) feet above the base flood elevation and be securely attached to an adequately anchored foundation system to resist flotation, collapse, and lateral movement. The elevation of the lowest floor shall be certified by a licensed land surveyor or professional engineer.

(c) All manufactured homes that are placed or substantially improved on sites in an existing manufactured home park or subdivision within all unnumbered and numbered A zones, AE and AH zones, on the community's FIRM that are not subject to the provisions of subparagraph (b) herein shall be elevated so that either:

- (1) The lowest floor of the manufactured home is a minimum of two (2) feet above the base flood level; or
- (2) The chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than thirty-six (36) inches in height above grade and that are securely attached to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

The elevation of the lowest floor shall be certified by a licensed land surveyor or professional engineer.

SECTION 6. Section 27.06.200 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

Sec. 27.06.200. Variance procedures.

(a) The Floodplain Administrator shall hear and decide appeals and requests for variances from the floodplain management requirements of this ordinance. Applications for variance shall be in writing and on forms provided by the Administrator. A nonrefundable processing fee of one hundred dollars shall be paid to the Administrator at the time of the filing of a request for variance.

(b) The subdivision committee of the Metropolitan Area Planning Commission, the first Appeal Board shall hear appeals from any decision or determination made by the Administrator in the enforcement or administration of this chapter. Such appeals shall be in writing and shall specify the grounds for appeal. Such appeals shall be filed with the secretary of the Metropolitan Area Planning Commission within thirty days of the decision or determination appealed from. The secretary of the Metropolitan Area Planning Commission shall fix a reasonable time for the hearing of appeals, giving notice to the appealing party or parties at least fifteen days prior to such hearing. Appeals shall be decided within a reasonable time. At appeal hearings, any party may appear in person, by agent or by attorney. The subdivision committee may reverse or affirm, in whole or in part or modify the decision or determination appealed from and may make such order, requirement, decision or determination as may be appropriate under the circumstances.

(c) Any person aggrieved by the decision or determination of the subdivision committee may appeal such decision or determination to the Metropolitan Area Planning Commission, the second Appeal Board. The procedure for such appeals shall be as set forth above in subsection (a) for appeals from decisions by the Floodplain Administrator.

(d) Any person aggrieved by the decision or determination of the Metropolitan Area Planning Commission may appeal such decision or determination to the city council, the third Appeal

Board. The city council will review such decision or determination in the manner provided above for appeals from decisions by the Administrator, except that such appeals shall be filed with the city clerk and the notice to the appealing party or parties shall be provided at least five days prior to such hearing.

(e) In passing upon such applications for variances, the Administrator and Appeal Boards shall consider all technical data and evaluations, all relevant factors, standards specified in other sections of this ordinance, and the following criteria:

- (1) Danger to life and property due to flood damage and erosion damage;
- (2) Danger that materials may be swept onto other lands to the injury of others;
- (3) Susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
- (4) Importance of the services provided by the proposed facility to the community;
- (5) Necessity of the facility of a waterfront location, where applicable;
- (6) Availability of alternative locations, not subject to flood damage, for the proposed use;
- (7) Compatibility of the proposed use with existing and anticipated development;
- (8) Relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
- (9) Safety of access to the property in times of flood for ordinary and emergency vehicles;
- (10) Expected heights, velocity, duration, rate of rise and sediment transport of the flood water, if applicable, expected at the site; and,
- (11) Costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems; streets; and bridges;

(f) Variances may be issued for new construction and substantial improvement to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing items one (1) through five (5) below have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance increases.

- (1) Variances may be issued for the reconstruction, rehabilitation, or restoration of structures listed on the National Register of Historic Places, the State Inventory of Historic Places, or local inventory of historic places upon determination, provide the proposed activity will not preclude the structure's continued historic designation.
- (2) Variances shall not be issued within any designated floodway if any significant increase in flood discharge would result.
- (3) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- (4) Variances shall only be issued upon: (a) showing of good and sufficient cause, (b) determination that failure to grant the variance would result in exceptional hardship to the applicant, and (c) determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create

nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

(5) A community shall notify the applicant in writing over the signature of a community official that: (a) the issuance of a variance to construct a structure below base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25.00 for \$100.00 of insurance coverage (b) such construction below the base flood level increases risks to life and property. Such notification shall be maintained with the record of all variance actions as required by this ordinance.

SECTION 7. The originals of Sections 27.06.010, 27.06.020, 27.06.030 and 27.06.150. 27.06.160, and 27.06.200 of the Code of the City of Wichita, Kansas, are hereby appealed.

SECTION 8. This ordinance shall be included in the Code of the City of Wichita, Kansas, and shall be effective upon its passage and publication once in the official city paper.

PASSED by the governing body of the City of Wichita, Kansas, this 10th day of April, 2012.

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

Approved as to Form:

Gary E. Rebenstorf
Director of Law